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Supreme Court, U.S.
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No.

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1993

RICHARD R. LINDQUIST,
Petitioner,

versus

IRVING GOLDSCHNEIDER and
JAMES E. MULVIHILL,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In determining the validity and legitimacy of state university policy, should the Courts examine solely the rationality of the objective of the policy without regard to the rationality of the means used by the policy to reach the ultimate objective?

2. In a faculty initiated research project paid for by the American Cancer Society, can a university policy that achieves the rational goal of maximizing the state university's revenues by billing the American Cancer Society for more time than was actually devoted to the research work, be a valid, legitimate policy that outweighs a professor's constitutional protections to protest the university's policy of obtaining money

from the American Cancer Society and the millions of Americans who contribute their hard earned money to the American Cancer Society through the deceptive, if not outright fraudulent, practice of making the American Cancer Society pay for work not actually performed?

LIST OF ALL PARTIES TO THE PROCEEDING

All of the parties in the United States Court of Appeals for the Second Circuit are listed in the caption. The action was brought against them in their private and official capacities.

TABLE OF CONTENTS

Questions Presented i

List of All Parties to the Proceeding iii

Table of Contents iv

Appendix Contents vi

Table of Authorities viii

Opinions Below 1

Jurisdiction 1

Constitutional, Statutory, and Regulatory Provisions Involved 2

Statement of the Case 4

Claim Before the Court 4

Summary of the Claim 5

Overview of the Claim 7

The Proceedings Below 17

Reasons For Granting the Writ 24

I. THIS CASE PRESENTS AN IMPORTANT QUESTION OF WHETHER ONLY THE ENDS AND NOT THE MEANS ARE CONSIDERED WHEN DETERMINING THE RATIONALITY OF STATE POLICY 24

II. THIS CASE PRESENTS AN IMPORTANT

QUESTION OF LAW ABOUT THE EXTENT TO WHICH, CONSISTENT WITH THE CONSTITUTION, STATE GOVERNMENT CAN RETALIATE AGAINST A STATE EMPLOYEE FOR PROTESTING ETHICALLY AND LEGALLY QUESTIONABLE STATE POLICIES? 32

III. THIS CASE PRESENTS AN ISSUE OF PUBLIC IMPORTANCE ABOUT SAFE-GUARDING THE LIMITED FUNDS OF CHARITABLE ORGANIZATION FROM DUBIOUS, IF NOT FRAUDULENT, PREDATORY PRACTICES DESIGNED TO EXTRACT MONEY FROM THE CHARITABLE ORGANIZATION UNDER MISLEADING OR FALSE PRETENSES..... 37

IV. THIS CASE PRESENTS AN ISSUE OF GENERAL PUBLIC IMPORTANCE ABOUT BUSINESS PRACTICES THAT OVERSTATE AND OVER BILL CLIENTS AND/OR CONTRACTEES FOR THE AMOUNT OF TIME DEVOTED TO WORK ON THE CLIENTS AND/OR CONTRACTEES BEHALF..... 42

V. CONCLUSION 43

Appendix Contents

Court of Appeals,
denying Appeal A-1

Court of Appeals,
denying rehearing A-2

District Court,

Ruling on Motion to
Dismiss A-3

District Court,
Ruling on Motion for
Reconsideration A-38

District Court,
Ruling on Motion for
Summary Judgement A-45

United States Constitution,
Amendment I A-58

United States Constitution,
Amendment IVX A-58

Third Amended Complaint A-59

Affidavit of
Irving Goldschneider A-60

Affidavit of
Richard R. Lindquist A-62

Deposition of
Eugene Sigman A-64

Deposition of
James E. Mulvihill A-71

Agreement with U.S.
Government Re:SSOG A-73

Connecticut Freedom of
Information Commission Ruling .. A-76

Deposition of
Irving Goldschneider A-77

Admissions of
James E. Mulvihill A-81

Admissions of
Irving Goldschneider A-82

Brief, Motion to Reconsider
Order of Summary Judgement A-84

Brief, Motion on Appeal A-85

Brief, Motion for Rehearing A-87

Connecticut General Statute
Sec. 10a-102 ..... A-89

University of Connecticut
Laws and By-Laws A-90

FASEB (Federation of
American Societies of
Experimental Biology)
Letter A-91

TABLE OF AUTHORITIES

Cases
Pickering v. Board of Education
391 U.S. 583 (1968) 33

United States Constitution
Amendment I 17

Amendment IVX 17, 30

Statutes
42 U.S.C. Section 1983 17

Connecticut General Statute
Sec. 10a-102 8

Miscellaneous Material
University of Connecticut
Laws and By-Laws 8

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays the Court summarily reverse the decision of the Court below in part and find that on its face any unwritten state policy that requires a professor to bill the American Cancer Society for 15% of the professor's time (SSOG) when the professor actually only devotes 10% of his time to a research project paid for by the American Cancer Society is not rational, and remand the case to the Court below for further disposition. In the alternative the writ should be granted.

OPINION BELOW

The opinion of the United States Court of Appeals, per curiam affirmance, was issued on June 21, 1993, and was reported 999 F. 2d 537, (2nd Cir.) 1993 (per curiam). It is retyped in the appendix hereto, (Pet.App. A-1). The Second Circuit's per curiam supplemental opinion, issued on August 3, 1993 denying Petition for Rehearing has not, as yet been reported. It is retyped in the appendix hereto, (Pet.App. A-2). The opinions of the District Court were not published. They are retyped in the appendix hereto: Ruling on Motion to Dismiss, Pet.App. A-3; Ruling on Motion to Reconsider, Pet.App. A-38; and Ruling on Motion for Summary Judgment, Pet. App. A-45.

BASIS FOR JURISDICTION

The judgment of the United States

Court of Appeals for the Second Circuit was entered on June 21, 1993. A timely Petition for Rehearing along with a suggestion to be heard in banc, timely filed, was denied on August 3, 1993, Pet. App. A-2

This Petition for Writ of Certiorari is being filed within the prescribed period of 90 days after August 3, 1993, the date the denial of rehearing was entered by the Appellate Court.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVE

The pertinent provisions of the Constitution of the United States of America are the First Amendment thereto and the Fourteenth Amendment thereto.

Their texts are set forth in the Appendix at Pet.App. A-58.

STATEMENT OF THE CASE

A. Claim before the Court

The uncontested facts central to the issue of this Petition for Writ of Certiorari are simple and clear if the distinction between the **time devoted to a job** and the **time billed for the job** is fully understood. Within the university, the time devoted to a research job is called percent time and effort (T&E), and the time billed for the research job is called, by all, percent SSOG.

The claim before this Court was summarized by the Court below:

> "[P]laintiff claims that his research proposal was rejected in retaliation for plaintiff's public criticism of the school's policy regarding the collection of SSOG (grant) funds." Ruling On Motion to Reconsider, p 2-3, Pet.App. A-41 & 42.

and as articulated in ¶18, Third Amended Complaint:

> "18. As a consequence and result of Plaintiff's public criticism of and opposition to Defendant Goldschneider's and the University's policy regarding the collection and distribution of state SSOG funds, Defendant Goldschneider has refused, and continued to refuse, to approve Plaintiff's research proposal to the American Cancer Society." Pet.App. A-59.

This claim only is the subject of the Petition for Writ of Certiorari.

B. Summary of the Claim

Keeping in mind the distinction between actual time devoted to research job (percent time & effort, also %T&E) and time billed for the research job (percent SSOG); the central uncontested facts relating to this claim are few and readily comprehended:

1) Petitioner Lindquist, on his own initiative, submitted a research proposal to American Cancer Society and asked them to pay for the proposed research work.

2) In said proposal, Lindquist planned devote 10% of his time (10% T&E) to the proposed research work and accordingly asked the American Cancer Society to pay for 10% of his time (10% SSOG).

3) Respondent Goldschneider refused to approval said research proposal because of an unwritten "longstanding ... policy requires ... at least 15% SSOG."

4) There is no **written** SSOG policy that requires a professor to bill for "at least 15% SSOG," and the university formally agreed with the U.S. Government not to bill them for more SSOG than the actual time professors devoted to research projects.

5) Lindquist refused to bill the ACS for 15% SSOG when in reality he was only going to devote 10% of his time to the proposed work.

6) There is no university policy as the minimum amount of time a professor need devote to an individual research proposal.

7) Lindquist would not increase his billing of the American Cancer Society to 15% SSOG, when he was only going to devote 10% of his actual time to the research work, because he was **protesting the SSOG policy** as Goldschneider applied it.

8) Lindquist argued the SSOG policy was deceptive and defrauded the ACS out of money by billing them for work not actually performed.

9) The Courts below concluded that the longstanding unwritten SSOG policy requiring "at least 15% SSOG" was rational, and that Lindquist could not hid behind the "first amendment after clearly violating established procedures."

In the following next section, C, these basic facts are more fully presented and referenced to the record.

C. Overview of the Claim

In an self-initiated request for a research grant[1] to the American Cancer Society, Lindquist (plaintiff/appellant/-petitioner) planned to devoted 10% of his full time and effort to the work proposed in the grant application and accordingly

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[1] In essence, a research grant is a contract in which the grantee agrees to perform certain research and the grantor agrees to pay for the agreed research.

asked the American Cancer Society to pay for 10% SSOG and of his full time salary[2]. ¶25, Lindquist Affidavit, Pet.App. A-62. Goldschneider and Mulvihill, defendants/appellees/respondents, would not give their necessary approval[3] to the research proposal because they wanted Lindquist to bill the American Cancer Society for 15% Lindquist's time even though Lindquist would devote only 10% of his time to the proposed research work. ¶47, 50, & 52, Goldschneider Affidavit. Pet. App. A-60

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[2] Salary, as used throughout, is the full employment cost to the state and includes the state portion of social security, health insurance, retirement etc. It is NOT Lindquist's gross salary.

[3] Pursuant to Connecticut General Statute, Sec. 10a-102, the university has regulations guaranteeing Lindquist's academic freedom, which includes "full freedom in research". Pet.App. A-89 and Pet-.App. A-90.

Lindquist refuse their request and would not bill the American Cancer Society for 15% of his time when, in reality, he was only going to devote 10% of his time to the work.

All parties agree that Lindquist would not increase the amount of SSOG and money he would request from the American Cancer Society because he was **protesting** against an **unwritten** policy[4] that defen-

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[4] There is a written policy on this subject. However, it is uncontested by the parties that the written policy does not require 15% billing. Moreover, with respect to said written policy, Dr. Sigman, dean & chief executive officer of the school of medicine, swore during oral deposition that not only was there no 15% rule, but that the written policy only **suggested** that faculty ask granting agencies to reimburse the school for the professor's time devoted to a research project. Pet.App. A-64&65. Similarly DEFENDANT Mulvihill, vice president & chief executive officer of the entire university Health Center swore upon oral deposition that it only **encourages** investiga-

dant/respondent Goldschneider claimed to exist and was said to require faculty to ask the granting agencies to pay for at least 15% of a professor's time regardless that his time actually devoted to the work on the proposed research grant was less[5]. ¶53 & 57 Goldschneider Affidavit, Pet.App. A-61, and ¶26 Lindquist Affidavit, Pet.App. A-62&63. See also[6].

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tors to put in for salary support. Pet.-App. A-72.

[5] By agreement the university did NOT employ this tactic with grants from the U.S. Department of Health Education & Welfare's National Institute of Health. The university formally agreed with them that "[all] amounts (SSOG) requested ... of the principal investigators salary, must be supported by an effort commitment equal to or exceeding the percentage (-SSOG) requested and must be demonstrated each month by submission or (sic) proper effort reports." Pet.App. A-73.

[6] Dr. Sigman, dean and chief executive officer of the school of medicine, swore during upon oral deposition that it would be **WRONG** for the university to ask Lindquist for 15% SSOG when Lindquist

The monies obtained by billing the American Cancer Society for the faculty's time were deposited into a "discretionary" fund that was held by university administrators secretly[7] and independently of the state budgeting process. This fund is colloquially called by all parties, the SSOG fund. It is uncontested that these "discretionary" funds are used to support what were really functions unrelated to the research for

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planned to devote 10% Time and effort (T&E) to the American Cancer Society research proposal grant. Pet.App. A-65. See also Pet.App. A-68&69.

[7] In order to see the SSOG accounts, Lindquist had to file a complaint with the Freedom of Information Commission of the State of Connecticut (Docket #FIC 86-46) in order see how the state SSOG monies were being spent. Second Amended Complaint, Count III, ¶ 64.; Freedom of Information Commission of the State of Connecticut, Docket #FIC 86-46, Pet.App. A-76.

which grants were to be made[8]. See Also[8].

Specifically with respect to the instant American Cancer Society research grant proposal, Lindquist was protesting, what he considered, the school's dubious, if not fraudulent, practice of extracting money from private philanthropic organi-

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[8] Defendant Goldschneider used SSOG funds for his own scientific and personal benefits which included a trip, with his wife, to Bermuda, Deposition of Irving Goldschneider, pp 309-10. Pet.App. A-77-79.

[8] In addition to billing granting agencies for the direct costs of doing the proposed research work, the university bills granting agencies for additional "indirect costs" for incidental costs. The American Cancer Society limited the amount of indirect cost to 25% of the total direct cost. The funds generated from indirect costs are deposited into state audited accounts.

zations[10] such as the American Cancer Society by billing them for more of faculty member's time & effort than was actually going to be devoted to the research project that they paid for.

All parties agree that there is no policy as to the minimum amount of time a professor need devote to an individual research project. It is important to emphasize this. Defendants admitted via Requests For Admissions that there are no rules, regulation, policy or guidelines at the university or School of Medicine as to the minimum amount of a professor's time need actually devote to a specific research proposal. Defendant Mulvihill's

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[10] See footnote #4, supra, to see how this "unwritten policy" applied only to private granting agencies and not to grants from the U.S. government. Pet.App. A-73.

Response to Plaintiff's Request for Admissions at ¶ 166 & 167, Pet.App. A-81. Defendant Goldschneider's Response to Plaintiff's Request for Admissions at ¶ 165, 166 & 167, Pet.App. A-82. This is further sworn to in the Deposition of Eugene Sigman, Dean and chief executive officer, of the School of Medicine, Pet.-App. A-70.

It also is uncontested that there is no School requirement or policy that a faculty member undertake only those outside-funded research projects that demand more than a certain amount of time. Devotion of 10% of Lindquist's time & effort to the specific proposed research is

more than consistent with usual research practice[11].

Lindquist argued that no such unwritten policy, which billed for more time than was actually devoted to the research, could exist, for it could not be valid, because it was deceptive, if not fraudulent.

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[11] Devotion of 10% time to this grant is appropriate and is in keeping with acceptable norms. Many grantees, also called principle investigators, devote little time to research projects because most of the actual work is done by research assistants and/or graduate assistants under the leadership and direction of the grantee. For specific data, see the report by The Office of the Inspector General. The Office of the Inspector General reported the results of a survey to the U.S. Congress that indicated that "a significant percentage of P[rinciple] I[nvestigators] (such as Lindquist) reported little or no effort on Federal projects" and "33 percent charged no effort to their projects" because graduate assistants under the leadership and direction of skilled PI's appeared to be performing most of the technical research work." 22 FASEB NEWSLETTER n. 5, p.4 (May 1989). Pet.App. A-91.

On Motion for Summary Judgment, The District Court concluded, and Appellate Court affirmed, that the university policy which requires Lindquist to bill the American Cancer Society for 15% of his time when he was only going to actually devote 10% of his time to the research performed for the American Cancer Society was a rational policy:

> "Plaintiff does not proffer any substantive reason that would permit a reasonable inference that university policy was irrational...." Ruling on Motion for Summary Judgment, at 6, Pet.App. A-55.

Accordingly, Motion For Summary Judgment, contrary to the recommendation of Magistrate Smith who heard oral arguments, was granted:

> Lindquist "has failed to demonstrate in what way his protest of university policy rises to the level of protected speech (because Lindquist) cannot take shelter in the first amendment after clearly violating established procedures that the pla-

> intiff already knows will result in the denial of the requested grant. See Givhan v. Western Line Consolidated School Dist., 439 U.S. 410 (1979)." Ruling on Motion for Summary Judgment, at 6, Pet.App. A-55&-56.

D. The Proceedings Below.

The action was brought in United States District Court, District of Connecticut under the First and Fourteenth Amendments to the Constitution of United States and 42 U.S.C. Section 1983. Jurisdiction of the Federal District Court is pursuant to 28 U.S.C. Sections 1331, 1343, and 1391(b).

Lindquist's original complaint, as articulated in the Second Amended Complaint, alleged First and Fourteenth Amendment violations in four (4) different and distinct instances: (1) censorship of the method and content of classroom teaching, (2) censorship of written material

to be handed out to the students, (3) censorship of a research proposal, (4) financial retaliation for Lindquist's criticism to Goldschneider in private on an issue of public concern and importance.

On Motion to Dismiss, all counts with the exception of the alleged censorship of the classroom teaching of controversial ideas were dismissed by District Court. Pet.App. A-3.

On Motion to Reconsider the District Court permitted Lindquist to add an new claim, which was articulated in ¶ 18, Third Amended Complaint:

> "18. As a consequence and result of Plaintiff's public criticism of and opposition to Defendant Goldschneider's and the University's policy regarding the collection and distribution of state SSOG funds, Defen-

> dant Goldschneider has refused, and continued to refuse, to approve Plaintiff's research proposal to the American Cancer Society." Pet.App. A-59.

It is this claim only that petitioner raises on the instant petition for writ of certiorari.

It is important to emphasize that the court below recognized that this new claim was distinct and unrelated to the initial claims and the claim surviving the motion to dismiss. The District Court unequivocally stated that the new allegation was that defendants' refusal to approve Lindquist's American Cancer Society research proposal was because of Lindquist's objection to university policy regarding grant applications:

> "Alternatively, plaintiff claims that his research proposal was rejected **in retaliation for plaintiff's public**

> criticism of the school's policy regarding the collection of SSOG (grant) funds. While such an allegation had not been previously alleged, plaintiff has, through the benefit of discovery, alleged sufficient facts to support such an allegation. Thus, plaintiff has properly alleged a first amendment claim based on defendants' retaliatory action as a result of plaintiff's expression. Plaintiff is not seeking reconsideration, but an opportunity to add a new claim. Plaintiff shall amend his complaint within twenty (20) days of the date of this order to assert this claim." (emphasis not in original). Ruling On Motion to Reconsider, p 2-3, Pet.App. A-41&42.

A plain reading of ¶ 18 of the Third Amended Complaint and, most importantly, District Court's Ruling On Motion to Reconsider, supra, make abundantly clear that the claim related to the American Cancer Society research grant proposal was distinct and separate from the claim centering on the teaching of controversial ideas.

The reason for emphasizing this point is that when summary judgment was granted the Courts below expressed some confusion as to whether the new claim was or was not related to the only remaining original claim of censorship of and retaliation for teaching controversial ideas in the classroom[12].

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12 Although as indicated supra the Courts below concluded that Lindquist "has failed to demonstrate in what way his protest of university policy rises to the level of protected speech (because Lindquist) cannot take shelter in the first amendment after clearly violating established procedures that the plaintiff already knows will result in the denial of the requested grant." Ruling on Motion for Summary Judgment, at 6, Pet.App A-56. The Court also wrote "It is unclear whether plaintiff is alleging that the refusal related to plaintiff's allegedly controversial teaching or his objection to university policy regarding grant applications." Ruling on Summary Judgment, pages 5-, Pet.App. A-54. Also The Court, in contrast to the clear record, wrote: "Plaintiff contends that both defendant Goldschneider's denial of a merit increase in the Spring of 1984 as well as his refusal to sign plaintiff's grant

On Motion for Summary Judgment, Magistrate Smith heard oral arguments and recommended that Motion for Summary Judgment be Denied. On January 30, 1992, the District Court granted Motion for Summary Judgment.

In a timely filed Motion to Reconsider Order of Summary Judgment, which was denied, Lindquist argued in unvarnished terms that any university policy requiring Lindquist to ask the American Cancer Society to pay for 15% of his time when, in reality, he was only going to devote 10% of his full time and effort to the work in the research proposal was fraudulent, Pet.App. A-84. Lindquist

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application stemmed directly from his distaste for plaintiff's controversial views as expounded in the classroom." Ruling on Summary Judgment, page 3, Pet.-App. A-50.

made similar arguments to the Court of Appeals, Pet.App. A-85-88.

REASON FOR GRANTING THE WRIT

I

THIS CASE PRESENTS AN IMPORTANT QUESTION OF WHETHER ONLY THE ENDS AND NOT THE MEANS ARE CONSIDERED WHEN DETERMINING THE RATIONALITY OF STATE POLICY.

The Courts below based summary judgment against the claim before this Court on the findings that the university policy was not irrational[13], and that constitutional rights to protest must give way to rational state policy[14].

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[13] "Plaintiff does not proffer any substantive reason that would permit a reasonable inference that university policy was irrational...." Ruling on Motion for Summary Judgment, at 6, Pet.App. A-55.

[14] Lindquist "has failed to demonstrate in what way his protest of university policy rises to the level of protected speech (because Lindquist) cannot take shelter in the first amendment after clearly violating established procedures

The Courts below concluded that the university policy of making the American Cancer Society pay for 15% Lindquist's time (SSOG) when in reality Lindquist would only devote 10% of his time to the research work paid for was not irrational policy.

However, in reaching this conclusion the Courts below, no doubt, focused only on the rationality of the policy's **objective** and did not consider the rationality of the **means** to accomplish the policy's objective. A policy that increases the revenues of a university is unquestionably laudable and the petitioner does not dispute this. However, **is any means ac-**

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that the plaintiff already knows will result in the denial of the requested grant." Ruling on Motion for Summary Judgment, at 6, Pet. App. A-55 & 56.

ceptable in reaching the lofty goal of increasing the university's revenue? This is the age old question of does the end justify the means?

In our society, I have been led to believe that morally, ethically and legally the end does not justify any means.

In examining the rationality of the state policy at issue, the Courts below erred by not looking at the means and methods used to accomplish the objective of increasing university revenues. In the instant case the means was one of deception, if not outright fraud.

The policy required the American Cancer Society to pay for a minimum of 15% SSOG (the amount of Lindquist's time

billed to the American Cancer Society) when, in fact, Lindquist was actually only going to devote 10% of his time to the research project paid for by the American Cancer Society.

Clearly, this policy achieves the rational aim of maximizing university revenues. But a what moral, ethical, and legal price? The price was using a means and method that was going to charge the American Cancer Society, and the millions of Americans who contribute to them, for work not performed. Can such a policy be rational? I submit it cannot be rational and this Court should summarily so rule.

Petitioner contends that any state university policy that is based on deceiving the American Cancer Society by

overstating the amount of time a professor is devoting to a grant project and thus defrauding the American Cancer Society out of its limited funds for cancer research, is on its face irrational and thereby null and void.

No other offer of proof other than the policy itself, as applied by Goldschneider, is necessary to establish the policy's irrationality and illegitimacy.

Lindquist did, however proffer other substantive reasons as to the irrationality of the policy.

First, Dr. Sigman, dean & chief executive officer of the school of medicine, swore upon oral deposition that it was **wrong** to charge 15% SSOG when Lindquist was only going to devote 10% of his time to the

research project paid for by the American Cancer Society. Pet.App. A-65. See also Pet.App. A-68 & 69.

Second, is the documentary evidence that the university agreed with the United States Government -who has field auditors, inspector generals, and the power & will to enforce ethical practices by threat of punitive measures- that all requests for SSOG must be supported by a percent time commitment by the professor doing the research work "equal to or exceeding the percentage" SSOG. See footnote 5, supra & Pet.App. A-72.

The existence of the aforementioned agreement by the university and the facts of the instant case unequivocally establishes that the Goldschneider and the

university arbitrarily and unevenly applied their unwritten SSOG policy. In applying it to the U.S. government the percent SSOG **could not exceed** the actual percent time devoted to a research project. In applying it to private philanthropic organizations, such as in the instant case, the American Cancer Society, -who, because they lack sufficient resources to audit how their money is being spent, depend on the ethical conduct of the university officials- the percent SSOG **could exceed** the actual percent time devoted to a research project.

Thus, the arbitrary application of the policy makes the policy irrational and inconsistent with due process provisions of the Fourteenth Amendment.

In addition, the existence of the aforementioned agreement made it clear to Goldschneider, that the U. S. government considered billing for more time than the actual time devoted to a research was an unacceptable practice. None the less Goldschneider used this knowingly unacceptable practice, which the Dean of the School of Medicine said was wrong, in the instant case, Pet.App. A-65.

The Courts below erred by not examining the method, which was wrong, arbitrary, and deceptive, used by respondents to reach to end of increased university revenue when determining the overall rationality of an unwritten policy that makes the American Cancer Society pay for work not performed.

II.

THIS CASE PRESENTS AN IMPORTANT QUESTION OF LAW ABOUT THE EXTENT TO WHICH, CONSISTENT WITH THE CONSTITUTION, STATE GOVERNMENT CAN RETALIATE AGAINST A STATE EMPLOYEE FOR PROTESTING ETHICALLY AND LEGALLY QUESTIONABLE STATE POLICIES?

Unquestionably state employees have first amendment rights in protesting about issues of public importance and concern. Equally unquestioned, is that the state has a right to enforce its rational policies. The competing free speech interests of teachers and state interests are resolved with the Pickering calculus. The balance, between the public employee's constitutional rights to free expression, and the state's rights, as an employer in carrying out the legit-

imate functions of the state to limit free expression, was articulated in Pickering v Board of Education, 391 US 563, 20 L Ed 2d 811, 88 S Ct 1731, (1968). In looking at the employee's side of the equation, the Court has to determine how important the expression is to matters of public concern, and a strict standard of scrutiny is used when weighing the State's side of the Pickering balance.

In the instant case, the state has no **legitimate** right to make the American Cancer Society to pay for work not actually performed. The state policy at issue herein is of importance and concern to the public because at issue is how the state raises money to support state institutions. Furthermore, many Connecticut citizens contribute their money to

the American Cancer Society and they, therefore, have important concerns as to how that money is being spent.

If, as should be obvious from the foregoing facts and arguments, the unwritten SSOG policy, of billing the American Cancer Society for 15% of Lindquist's time when only 10% of his time was actually devoted to the research paid for by them, is irrational and non-valid; the second finding of the Courts below, i.e. Lindquist "cannot take shelter in the first amendment after clearly violating established procedures that the plaintiff already knows will result in the denial of the requested grant," (Pet.App. A-55 & 56), necessarily must fall and is in error.

Therefore Lindquist was not clearly violating established rational procedures.

This being the case, we are left with a situation were respondents refused to approve Lindquist's ACS grant application in retaliation for Lindquist's protest and criticism of their irrational policy, which deceived the American Cancer Society by overstating the amount of time Lindquist was to devote to his proposed research project and thus defraud the American Cancer Society out of its limited funds for cancer research.

Thus, as argued, Lindquist was not violating a clearly established rational policy. Therefore, Lindquist, consistent with the free speech provisions of the

First Amendment, without fear of retaliation, should be allowed to protest the irrational policy at issue herein as applied by Goldschneider.

III.

THIS CASE PRESENTS AN ISSUE OF PUBLIC IMPORTANCE ABOUT SAFEGUARDING THE LIMITED FUNDS OF CHARITABLE ORGANIZATION FROM DUBIOUS, IF NOT FRAUDULENT, PRACTICES DESIGNED TO EXTRACT MONEY FROM THE CHARITABLE ORGANIZATION UNDER MISLEADING OR FALSE PRETENSES.

A. In this era of shrinking federal dollars supporting medical research[15], private granting agencies, such as the American Cancer Society have become a

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[15] At Allergy and Infectious Disease Institute of the National Institutes of Health, the latest statistics indicate that of scientifically approve research proposals only the top 14% of AIDS research projects are funded and only the top 10% of non-AIDS research is funded. Thus, numerous meritorious research projects go unfunded and undone for lack of dollars. Perhaps undone is the critical research that would lead to a cure or effective treatment of disease.

more significance source of support for biomedical research. Unfortunately, even the numerous private philanthropic organizations and thousand points of light cannot provide the needed support for meritorious research proposals. Many meritorious research grants proposals, which if monies were available would be funded, go unfunded and thus, meritorious ideas that could lead to important advances in health go untried and untested.

It is urgent, therefore, that the research dollars, which, in the case of charitable groups such as the American Cancer Society, is donated by thousands and thousands of individuals, be spent prudently. Certainly it is not in the public interest to allow these charitable

groups to be defrauded of their limited funds by universities who attempt to extract maximum dollars from them by overstating the amount of a faculty member's time actually devoted to the research project which they pay for.

It is, therefore, of widespread public importance that the Court consider the issue here presented and summarily rule that any policy which makes philanthropic organizations pay for work not actually performed is irrational.

B. The holding below, if allowed to stand, would provide an endorsement by the federal judiciary of university policy which deliberately overcharges philanthropic organizations for work not actually performed.

In this era of frequent limited funding of state colleges and universities, the universities are seeking alternative ways to supplement their revenues. Should this Court allow the holding below to stand, it will not go unnoticed by university administrators who are eagerly looking for ways to obtain dollars for their institutions. If the Court doesn't find that the policy at issue herein is irrational, many others, cloaked in the mantel of the federal judicial precedent, will emulate respondents and unjustifiably further drain away the limited dollars available for medical research, and thus increase the number of meritorious ideas that cannot not be tested due to lack of research dollars.

It is, therefore, of widespread public importance that the Court consider the issue here presented and summarily rule the policy at issue is irrational and thus null and void.

IV.

THIS CASE PRESENTS AN ISSUE OF GENERAL PUBLIC IMPORTANCE ABOUT BUSINESS PRACTICES THAT OVERSTATE AND OVER BILL CLIENTS AND/OR CONTRACTEES FOR THE AMOUNT OF TIME DEVOTED TO WORK ON THE CLIENTS AND/OR CONTRACTEES BEHALF.

If allowed to stand, the imprimatur of the federal courts will be placed on the policy at issue herein. Professions and businesses in general will enthusiastically adopted the Court backed policy of over billing clients and contractees for work not actually performed with the reassurance of Federal Court precedent that such policy is rational. Moreover, it will provide the necessary legal cover

for some professions already under attack for their hourly billing procedures.

CONCLUSION

Petitioner respectfully prays the Court summarily reverse the decision of the Court below in part and find that on its face any unwritten state policy that requires a professor to bill the American Cancer Society for 15% of the professor's time (SSOG) when the professor actually only devotes 10% of his time to a research project paid for by the American Cancer Society is not rational, and remand the case to the Court below for further disposition.

If allowed to stand, the imprimatur of the federal courts will be placed on

the over-billing policy at issue, and thereby unleashing even un-aggressive university administrators to raid the limited resources of philanthropic organizations by billing them for work not performed on research projects paid for by the philanthropic organizations. Similarly, it is not in the public interest to allow this precedent and thereby provide the reassurance for professions and businesses, which bill their clients by time, to bill their clients for work not actually performed.

Summary reversal is appropriate where the action of the lower Court was clearly improper and erroneous.

Alternately, for the foregoing reasons -as well as any additional reasons

apparent to the Court or others- the petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard R. Lindquist*
1575 Main Street
South Windsor, CT 06074
203 289-8715

*Pro Se Petitioner

PETITIONER'S APPENDIX
TABLE OF CONTENTS

Court of Appeals,
denying Appeal A-1

Court of Appeals,
denying rehearing A-2

District Court,
Ruling on Motion to
Dismiss A-3

District Court,
Ruling on Motion for
Reconsideration A-38

District Court,
Ruling on Motion for
Summary Judgement A-45

United States Constitution,
Amendment I A-58

United States Constitution,
Amendment IVX A-58

Third Amended Complaint A-59

Affidavit of
Irving Goldschneider A-60

Affidavit of
Richard R. Lindquist A-62

Deposition of
Eugene Sigman A-64

Deposition of
James E. Mulvihill A-71

Agreement with U.S.
Government Re:SSOG A-73

Connecticut Freedom of
Information Commission Ruling .. A-76

Deposition of
Irving Goldschneider A-77

Admissions of
James E. Mulvihill A-81

Admissions of
Irving Goldschneider A-82

Brief, Motion to Reconsider
Order of Summary Judgement A-84

Brief, Motion on Appeal A-85

Brief, Motion for Rehearing A-87

Connecticut General Statute
Sec. 10a-102 ..... A-89

University of Connecticut
Laws and By-Laws A-90

FASEB (Federation of
American Societies of
Experimental Biology)
Letter A-91

Copy, APPELLATE COURT DECISION

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-first day of June one thousand nine hundred and ninety-three.

Filed June 21, 1993

Present: HONORABLE AMALYA L. KEARSE,
HONORABLE ROGER J. MINER,
HONORABLE FRANK X. ALTIMARI,
Circuit Judges

RICHARD R. LINDQUIST
Plaintiff-Appellant

- v. - No: 92-7753

IRVING GOLDSCHNEIDER, Official in his individual capacity as Head Dept. of Pathology, University of CT School of Medicine, James E. Mulvihill, in his official capacity as Vice President and Provost for Health Affairs, University of Connecticut,
Defendant-Appellees

Appeal from the United States District Court of the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by plaintiff pro se and by counsel for defendants.

UPON CONSIDERATION WHEREOF, it is hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby affirmed.

ISSUED AS MANDATE: 8/10/93

Copy, Denial of Petition For Rehearing

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the third day of August one thousand nine hundred and ninety three.

RICHARD R. LINDQUIST
Plaintiff-Appellant

vs.

IRVING GOLDSCHNEIDER
Defendant-Appellee

Docket No: 92-7753

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by pro se appellant RICHARD R. LINDQUIST,

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that

heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT,
ELAINE B. GOLDSMITH,
Clerk

By:

CAROLYN CLARK CAMPBELL
Chief Deputy Clerk

Filed Aug 3, 1993

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. H-89-328 (PCD)

RICHARD LINDQUIST :

-vs- :

IRVING GOLDSCHNEIDER :

RULING ON MOTION TO DISMISS

This action, under 42 U.S.C. § 1983, relates to disciplinary action taken against plaintiff by defendants Irving Goldschneider ("Goldschneider") and James E. Mulvihill ("Mulvihill") with respect to his employment as Associate Professor at the Department of Pathology of the University of Connecticut School of Medicine ("School"). Defendants move to dismiss for failure to state a claim. Fed. R. Civ. P. 12(b) (6). Defendants' motion

is granted in part and denied in part.

Facts

The following facts as alleged in the second Amended Complaint ("complaint-")1/ are accepted as true. Yale Auto Parts, Inc. v. Johnson, 758 F.2d 54, 57 (2d Cir. 1985). Plaintiff has

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1/ Unless otherwise stated, hereinafter all references to the complaint will be to the Second Amended Complaint. Simultaneously herewith, plaintiff's motion for leave to file the Second Amended Complaint is being granted.

been a faculty member of the School since 1972. He is currently an Associate Professor. Complaint ¶¶ 8, 288. Plaintiff is subject to the University of Connecticut Laws and By-Laws. ¶ 11.

In 1984, plaintiff received 13 negative comments on student evaluations of a

pathobiology course he taught. ¶ 22. Defendants took notice of the evaluations and plaintiff's teaching style. Id. At the direction of Mulvihill, Goldschneider withheld any salary increment from plaintiff's 1984-85 salary. ¶¶ 23-29. Defendants threatened future financial action unless plaintiff conformed his teaching style to that prescribed by defendants. ¶¶ 47, 48, 49, 57.

In 1985, plaintiff was forced to modify his classroom speech and teaching style to a manner that took "into consideration the 'political reality' and necessity of getting good student evaluations" and met Goldschneider's approval. ¶¶ 47, 50. Among the changes plaintiff made to obtain good evaluations were: to refrain from asking students to think through problems; to respond to students'

questions directly rather than pose more questions that would eventually lead the student to the answer; to cease telling students about areas of scientific controversy or uncertainty; not to suggest to students that he expects excellence; and to provide students with conclusions rather than challenge them with questions. ¶¶ 48-55. Although the students' evaluations in 1985 were favorable, Goldschneider refused to reinstate plaintiff's salary increment and continued to threaten plaintiff. ¶ 57.

-3-

Plaintiff appealed the decision to withhold the increment to the Dean of the School, who ordered Goldschneider to reinstate it. ¶ 58. Nonetheless, Goldschneider continues to threaten plaintiff with future financial punishment and de-

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nial of teaching committee assignments if plaintiff does not continue to teach as prescribed by defendant. ¶ 63. Plaintiff was forced to replace his "lengthy and thorough syllabus with a shorter and simpler syllabus." Count II, ¶ 107. Plaintiff has had to continue teaching in the prescribed manner from 1985 to 1989. ¶¶ 62-64.

In 1987, plaintiff prepared a research grant application for submission to the American Cancer Society. Count III, ¶ 20. Defendant Mulvihill is responsible for a policy whereby grant applications must be approved by the institution prior to being sent to granting agencies. ¶ 30. All research proposals must be "judged 'consistent with the programs of (the) department.'" Id. Goldschneider refused to approve the grant

because plaintiff planned to devote 5% of his time to the project, ¶ 37, and Goldschneider wanted plaintiff to devote 15% of his time to the project. ¶ 39. Goldschneider thereby sought to obtain more funds from the American Cancer Society in the institutional fund which would then be transferred to the pathology departmental SSOG fund. ¶¶ 55-58. Plaintiff appealed this decision to the Dean of the School, Assistant Medical Dean for Financial Affairs and the Assistant Vice President for Research. ¶¶ 71-79. Goldschneider continues to refuse to sign said form. ¶¶ 107, 108.

As a result, plaintiff claims that he was deprived of his rights to academic freedom, freedom of speech, freedom of the press, equal protection, due process

under the privileges and immunities clause. In addition, plaintiff alleges violations of his constitutional rights under state law [illegible] tract and interference with contractual relations.

Discussion

A complaint should only be dismissed where no set of facts consistent with the allegations could be proven which would entitle plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The issue is not whether plaintiff will prevail, but whether he should be entitled to offer evidence to support his claims. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "In determining the sufficiency of a pro se complaint, it is now axiomatic that a court must construe it liberal-

ly, applying less stringent standards than when a plaintiff is represented by counsel." Robles v. Coughlin, 725 F.2d 12, 15 (2d Cir. 1983), citing Hughes v. Rowe, 449 U.S. 6, 9 (1980) (per curiam) and; Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

1. Eleventh Amendment Immunity

Defendants move to dismiss the federal and state claims asserted against them in their official capacity as state offi

cials2/. Plaintiff has brought suit against defendants in both their official and individual capacities. ¶¶ 7, 8, and 1 (of each count).

The Eleventh Amendment prohibits suits against the state by its own citi-

zens as well as non-residents seeking a retroactive award which requires payment of funds from the state treasury. See, e.g., Edelman v. Jordan, 415 U.S. 651, 677 (1974); McClary v. O'Hare, 786 F.2d 83, 89 (2d Cir. 1986). While Congress can abrogate the protections of the Eleventh Amendment, no such authorization is found in § 1983. Minotti v. Lensink, 798 F.2d 607, 609 (2d Cir. 1986), cert. denied, 482 U.S. 906 (1987). An exception exists in suits seeking prospective relief against state officials for violation of federal law. Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 102-103 (1984), citing Ex Parte Young, 209 U.S. 123 (1908).

In addition to compensatory relief, plaintiff seeks per-manent injunctive relief. Thus, plaintiff's damage claims

against the state officials in their official capacity are barred but not the claim for injunctive relief. Since the immunity granted in the eleventh amendment does not extend to state officers sued for damages in their individual capacity, the damage claims brought against the state defendants in their

---

2/ The University of Connecticut is an arm of the state government. Banerjee v. Roberts, 641 F. Supp. 1093, 1098 (D. Conn. 1986).

individual capacities will stand.

As to the pendent state law claims, they too are barred by the eleventh amendment. "A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of the United States." Penn-

hurst, 465 U.S. at 106. See also Banerjee, 641 F.Supp. at 1100. Plaintiff's state law claims against defendants in their official capacities must be dismissed.

2. First Amendment Claims

Plaintiff alleges defendants violated his first amendment rights by denying him the right: to teach in his own style; to speak to students about certain controversial scientific areas in his field; to submit grant applications to funding institutions absent prior approval; and to distribute a course syllabus to students. He argues that defendants' actions interfered with his right to academic freedom, guaranteed by the University By-Laws and the Constitution. Plaintiff's Memorandum in Opposition at 11.

Defendants claim that the alleged deprivations do not come within the scope of the first amendment protections and plaintiff has failed to state a claim upon which relief can be granted.

Academic freedom denotes both the freedom of the institution to pursue its end without government interference and the freedom of the teacher to pursue his ends without interference from the institution. Parate v. Isibor, 868 F.2d 821, 826 (6th Cir.

1989); see also, Piarowski v. Illinois Community College Dist. 515, 759 F.2d 625, 629 (7th Cir.), cert. denied, 474 U.S. 1007 (1985). In resolving the conflict that arises when both the professor and the institution claim a constitutional right to academic freedom, courts have

concluded that "[t]he First Amendment concept of academic freedom does not require that a non-tenured professor be made a sovereign unto himself." Parate, 868 F.2d at 827 (university officials may review a professor's classroom activities and teaching method for conformity with institutional standards). See also, Lovelace v. Southeastern Mass. Univ., 793 F.2d 419, 426 (1st Cir. 1986) (termination of non-tenured professor for refusing to lower his grading standards is not a constitutional claim); Hetrick v. Martin, 480 F.2d 705, 708 (8th Cir.), cert. denied, 414 U.S. 1075 (1973) (university may terminate non-tenured professor whose pedagogical attitude and teaching methods do not conform to constitutional standards); Carley v. Arizona Bd. of Regents, 737 P.2d 1098, 1103 (Ariz. App. 1987)

(decision not to retain professor, even if based, in part, upon student evaluations expressing disapproval of his teaching methods, did not violate professor's first amendment rights). Thus, to the extent plaintiff's claims of violation of his right to academic freedom are based on denial of the right to teach in a specific manner, he has failed to state a constitutional claim.

While plaintiff denies asserting a claim of a right to teach in his own manner, to the contrary the complaint specifically alleges changes that plaintiff was forced to make in his teaching

style. For example, the complaint refers to modifications in the manner in which he asked and responded to students' questions and the type of syllabus used

in the course. He does not contend that he was retaliated against for speaking out against university standards3/. Lovelace, 793 F.2d at 425 (distinguishing retaliation because of advocacy of change as opposed to refusal to change). He simply claims he was punished for teaching in a certain manner and threatened with future punishment if he refused to change his style. These allegations fail to state a constitutional claim.

Nor does the allegation that defendants refused to approve plaintiff's research proposal for submission to the American Cancer Society assert a constitutional claim. The first amendment does not require a state university to underwrite a professor's research by providing facilities and financing. McElearney v. University of Illinois, 812 F.2d 285, 288

(7th Cir. 1979) ("Academic freedom does not empower a professor to dictate to the University what research will be done using the school's facilities."). Plaintiff does not allege that defendants refused to approve his proposal because of its content but simply because they did not approve of the time plaintiff was willing to devote. Id. Plaintiff has failed to state a constitutional claim based

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3/ Such a claim would involve a public employee's rights to free speech and be subject to the balancing test applied in Connick v. Meyers, 461 U.S. 138, 145-146 (1983) and Pickering v. Board of Educ., 391 U.S. 563, 571-572 (1968).

on this allegation.

In contrast, plaintiff's claims that defendants denied him the right to present and discuss with students certain

controversial topics within the subject matter of the course, presents a constitutional claim. "Academic freedom thrives . . . on the robust and uninhibited exchange of ideas between the individual professor and his students." Regents of the University of Michigan v. Ewing, 474 U.S. 214, 226 n. 12 (1985). See also Carley, 737 P.2d at 1103 (presentation of controversial ideas to students is protected). The complaint alleges that defendants punished plaintiff for "teaching and acquainting the students with areas of scientific controversy." Count I, ¶ 39. Plaintiff claims that he was forced to stop expressing his views on the controversial subjects which he characterizes as political. Count I, ¶ 52; Plaintiff's Memorandum in Opposition at 22. This sufficiently alleges4/

a first amendment claim which, if proven, would entitle plaintiff to relief.

Accordingly, plaintiff has adequately alleged a first amendment claim based on defendants' actions with respect to plaintiff's expression of controversial idea. Defendants' motion

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4/ It should be emphasized that only the allegation that plain-tiff was denied the right to express controversial views in the classroom is found to be sufficient as a basis for a constitutional claim and not the allegations with respect to teaching style.

to dismiss the first amendment claims5/ is denied in part and granted in part.

3. Due Process Claims

In conclusory form, plaintiff alleges a deprivation of liberty and property

rights without due process of law. Count I, ¶ 93. Defendants move to dismiss the procedural due process claim on the ground that plaintiff fails to assert a deprivation of a protected liberty or property interest. Assuming plaintiff had a protected liberty or property interest in a salary increment, teaching in a specific manner without evaluation and obtaining approval of research grants, defendants argue that he was not deprived of those interests without due process.

To state a due process claim, plaintiff must allege denial of a property right or liberty interest within the scope of the fourteenth amendment protection. Board of Regents v. Roth, 408 U.S. 564, 569 (1972). "[W]here a person's good name, reputation, honor or integrity is at stake because of what the govern-

ment is doing to him," due process is required. Roth, 408 U.S. at 573, quoting Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971).

Property interests "are created and their dimensions are defined by existing rules or understandings that stem from an

---

5/ Since the elements of a first amendment claim are similar under both the state and federal constitutions, the claims are coexistent and are considered jointly.

independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." Roth, 408 U.S. at 577. "To have a property interest in a benefit, a person clearly must have more than an abstract need . .

. desire for . . . or unilateral expectation of it. He must, indeed, have a legitimate claim of entitlement to it." Once a protected interest is identified, the essential requirements of process due plaintiff are notice and an opportunity to be heard. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985); Roth, 408 U.S. at 570.

Relying on the University By-Laws, plaintiff claims that he was entitled to academic freedom. Plaintiff's Memorandum in Opposition at 60, citing Article XV.B. However, the same article also states:

> All members of the faculty, whether tenured or not, are entitled to academic freedom
> . . . . The Faculty member is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his or her other academic duties, but research for pecuniary return should be based upon an understanding with the authorities of the university.

(Emphasis added). As previously noted, plaintiff is not entitled to teach in the manner he wishes or to obtain automatic approval for research grants without conforming to university standards. Thus, plaintiff has failed to state a deprivation of a protected

property or liberty right with respect to these allegations6/.

Plaintiff claims a property interest in the annual salary increment. Plaintiff does not cite an independent source, such as state law, from which he bases his claim of entitlement. Instead he relies on defendants' "past usage" in routinely awarding salary increments to faculty. Plaintiff has failed to assert a property interest in the salary increment. Assuming arguendo defendants' pr-

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actice was sufficient to support a claim of

entitlement, plaintiff was afforded due process. Plaintiff appealed the denial of salary increment to the Dean of the School and the salary increment was reinstated. Count I, ¶ 58. "The denied salary increment was reinstated by increasing the usual salary increment for 1986-87 years by another 1.4% and in consideration for lost base in 1984-85 and 1985-86 an additional .1% salary increment was given," making his 1986-87 increment "larger than that the increment given generally to the basic science faculty." Id. at ¶¶ 60, 61. In addition, the By-Laws outline a faculty grievance procedure which allows for appeals beyond those of the faculty member's department, Dean and Vice President, and

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6/ Although this court previously found that plaintiff had asserted a violation of his First Amendment right to express his views to students in the classroom, the deprivation of the alleged constitutional right does not also give rise to a due process claim. See Narumanchi v. Board of Trustees of Conn. State Univ., 850 F.2d 70, 73 (2d Cir. 1988) ("First Amendment rights, in contrast to those rights protected by the procedural component of the Due Process Clause, are substantive in nature . . . [and] . . . may not be infringed regardless of the procedural 'protection' accompanying the deprivation.").

include the right to a hearing before an impartial faculty panel, review by the President and ultimately the Board of Trustees of the University.

As plaintiff has failed to allege a due process claim, defendants' motion to dismiss it is granted.

4. Equal Protection

"The first step in any equal protec-

tion claim is to establish that a recognizable, distinct class is "singled out for different treatment under the laws as written or as applied." Gann v. Schramm, 606 F. Supp. 1442, 1447 (D. Del. 1985), quoting Castaneda v. Partida, 430 U.S. 482, 494 (1977). The classification need not be racially based -- the equal protection clause may be applied to strike down any classification "not rationally related to a legitimate government purpose." Thurman v. City of Torrington, 595 F.Supp. 1521, 1526 (D.Conn. 1984). Plaintiff must allege that he was and is the victim of purposeful discrimination, either because of membership in a protected class or arbitrary classification unrelated to a legitimate state objective. See, e.g., Soberal-Perez v. Heckler, 717 F.2d 36,

41-42 (2d Cir. 1983), cert. denied, 466 U.S. 929 (1984); Sherrell v. City of Longview, 683 F. Supp. 1108, 1116 (E.D. Tex. 1987).

Facially neutral conduct can constitute denial of the equal protection clause, if plaintiff can show that he has been the victim of intentional discrimination. Heckler, 717 F.2d at 42; see also Batson v. Kentucky, 476 U.S. 79 (1986). The Supreme

Court, in Massachusetts v. Feeney, 442 U.S. 258 (1979), described the requisite discriminatory purpose as "more than intent as volition or intent as awareness of consequences. It implies that the decision maker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely

'in spite of,' its adverse effects upon an identifiable group." Id. at 279. Proof of discriminatory intent "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977).

The complaint fails to allege a suspect classification. Apart from the conclusory allegation of a violation of plaintiff's equal protection rights, the complaint does not allege any facts or conduct suggesting a suspect classification or the requisite intent. Thus, defendants' motion to dismiss the equal protection claims is granted.

5. Privileges and Immunities Claim

Plaintiff claims he has been de-

prived of the "rights, privileges and immunities secured to him by the Constitution and Laws of the United States." See, e.g., Count IV, ¶ 50

The privileges and immunities clause requires states to treat citizens from other states in the same manner as it treats its own citizens. United Bldg. & Const. v. Mayor & Council of Camden, 465 U.S. 208, 216-20 (1984); see also Banerjee, 641 F. Supp. at 1102. Plaintiff has not shown how, as a citizen of

Connecticut, the privileges and immunities clause applies to him in this situation. Plaintiff is a Connecticut resident suing state officials in their individual capacities, not the state itself, and the privileges and immunities clause does not apply. Thus, defendants' motion

to dismiss the privileges and immunities claim is granted.

8. Pendent State Claims

Plaintiff also seeks to hold defendants liable under state law for breach of contract (Count VI) and tortious interference with contractual relations (Count VII). These claims do not involve federal questions and there is no diversity of citizen-ship to provide a basis for subject matter jurisdiction. Defendants move to dismiss these counts for lack of pendent jurisdiction over state law claims.

Where state law claims are joined with a federal claim that has substance sufficient to confer subject matter jurisdiction and the claims derive from a common nucleus of operative fact, the

district court, in its discretion, may exercise jurisdiction over the state law claims. Robinson v. Via, 821 F.2d 913, 925 (2d Cir. 1987), citing United Mine Workers of America v. Gibbs, 383 U.S. 715, 725-728 (1966); see also, Mayer v. Oil Field Systems Corp., 803 F.2d 749, 757 (2d Cir. 1986). Among the factors to be considered in exercising jurisdiction are "comity, fairness to the litigants, judicial economy, and the avoidance of needless decisions of state law." Federman v. Empire Fire & Marine Ins.

Co., 597 F.2d 798, 809 (2d Cir. 1979). If the state claims predominate or the jury is likely to be confused from divergent legal theories, the state claims should be dismissed. Id; see also, Miller v. Lovett, 879 F.2d 1066, 1071-1072 (2d Cir.

1989) ("Where the . . . [state law claims and federal claims] are 'closely tied . . . the argument for the exercise of pendent jurisdiction is particularly strong.'"), quoting Gibbs, 383 U.S. at 727.

The state law claims concern the existence and nature of the employment contract between plaintiff and the university. The remaining first amendment claims do not depend on the parties' contractual relationship or plaintiff's rights under the contract but simply concern plaintiff's free speech rights. The state claims are much broader in terms of proof, scope and potential remedy and joinder of them would unnecessarily confuse the jury. The state claims do not arise from the same nucleus of operative fact to warrant the exercise of pendent jurisdiction. The adjudication of the

federal claim does not appear to prejudice plaintiff's assertion of the pendent claims in state court. As different issues and evidence are involved, there is no duplication in presenting them in state court. Thus, the pendent claims are dismissed.

7. **Qualified Immunity Defense**

Defendants move to dismiss the complaint on the grounds that it fails to allege facts sufficient to overcome the individual

defendants' defense of qualified immunity. Defendants argue that plaintiff has failed to allege the violation by defendants of established law of which a reasonable person should have known. A government official can be accorded the de-

fense of qualified immunity in a § 1983 action if the official's actions "were objectively reasonable under the legal rules that were clearly applicable at the time of his actions." Liffiton v. Keuker, 850F.2d 73, 76 (2d Cir. 1988). See also Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The Second Circuit has stated that the defense of qualified immunity does not "ordinarily" support dismissal under Fed. R. Civ. P. 12(b)(6). Liffiton, 850 F. 2d at 76; Green v. Maraio, 772 F.2d 1013, 1018 (2d Cir. 1983). "The fate of an official with qualified immunity depends upon the circumstances and motivations of his actions, as established by the evidence at trial." Imbler v. Pachtman, 424 U.S. 409, 419 n. 13 (1976). See Green, 722 F.2d at 1018. However, if the "complaint itself estab-

lishes the circumstances required as a predicate to a finding of a qualified immunity and, consequently there is no reason to require an answer, hearing or trial," the motion to dismiss can be granted. Green, 722 F.2d at 1018. See also, Harlow, 457 U.S. at 807-808.

As previously determined, the complaint alleges a violation of plaintiff's constitutional right to free speech. Based on the complaint alone, it does not appear that defendant's actions were objectively reasonable. Factual information is necessary to determine whether defendants are entitled to qualified immunity.

Liffiton, 850 F.2d at 76. Thus, defendants' motion to dismiss on the qualified immunity defense is denied.

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Conclusion

Accordingly, defendants' motion to dismiss the complaint is granted except with respect to plaintiff's first amendment claims, both under federal and state law, which are denied.

SO ORDERED.

Date at Hartford, Connecticut, this 30th day of March, 1990.

Peter C. Dorsey
United States District Judge

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. H-89-326 (PCD

RICHARD R. LINDQUIST :

-vs- :

IRVING GOLDSCHNEIDER, et al. :

RULING ON MOTION TO RECONSIDER

On March 30, 1990, all of the plaintiff's claims were dismissed except the first amendment claim concerning plaintiff's expression of controversial ideas in the classroom. Plaintiff now asks the court to reconsider its ruling or to permit plaintiff "to add alternative allegations to the complaint."

The purpose of a motion for reconsideration is "to correct manifest errors of law or fact or to present newly dis-

covered evidence." Johnson v. Heckler, 607 F. Supp. 875, 877 (D.C. Ill.1984); Ratterree v. Chemical Bank, Civil No. B-88-636 (EBB) (D.Conn. Dec. 28, 1989), Ruling on Motion to Alter Judgement at 1 n.1. The narrow scope of review ensures "the finality of decision and then plugging gaps of a lost motion with additional matters." Ratterree, B-88-636, Id. at 1 n.1.

Plaintiff objects to this court's dismissal of plaintiff's first amendment claims relating to defendants' alleged refusal to

approve plaintiff's research proposal. In reaching this conclusion, it was noted that "plaintiff does not allege that defendants refused to approve his proposal because of its content but simply because

they did not approve of the time plaintiff was willing to devote to it." Ruling on Motion to Dismiss (Mar. 30, 1990) at 8. Plaintiff, relying on an argument made in his reply memorandum, now claims that Goldschneider refused to approve his research proposal because of its content. However, there was no factual allegation in the complaint to support this claim. Even assuming, arguendo, plaintiff had properly alleged that his research proposal was refused on the basis of its content, plaintiff has not alleged a first amendment claim. As was noted, the first amendment does not require a state university to underwrite a professor's research by providing research facilities and financing. McElearney v. University of Illinois, 612 F. 2d 285, 288 (7th Cir. 1979). Thus, defendants were not re-

quired to accept and support plaintiff's research proposal. The refusal to underwrite the research did not constitute a first amendment violation and the claim was properly dismissed.

Alternatively, plaintiff claims that his research proposal was rejected in retaliation for plaintiff's public criticism of the school's policy regarding the collection of SSOG (grant) funds. While such an allegation had not been previously alleged, plaintiff has, through the benefit of discovery, alleged suffi-

cient facts to support such an allegation. Thus, plaintiff has properly alleged a first amendment claim based on defendants' retaliatory action as a result of plaintiff's expression.

Plaintiff is not seeking reconsideration,

but an opportunity to ass a new claim. Plaintiff shall amend his complaint within twenty (20) days of the date of this order to assert this claim.

Plaintiff also objects to the court's dismissal of the claim that plaintiff was forced to replace his "lengthy and thorough syllabus with a shorter and simpler syllabus." Complaint at ¶ 107. While no such allegation was previously made, plaintiff now claims that his syllabus was rejected based on its content, specifically the content of the same controversial ideas which form the basis of the first amendment claim recognized by this court. In a classic attempt to fill the gaps of a losing motion, plaintiff contends that the term in the complaint "to not tell students about areas of scientific controversy" was used on refer-

ence to the syllabus and "the telling was by way of the written syllabus." There is no allegation in the complaint that the syllabus was rejected on the basis of its content, but rather its length. Even assuming such a claim had properly been alleged, it would only serve to supplement the existing first amendment claim. Plaintiff's motion is denied with respect to this claim.

Plaintiff's objection to dismissal of the pendent state

claims is denied as not raising ground not previously considered.

Conclusion

The ruling on motion to dismiss is affirmed and will stand. Plaintiff is granted leave to file, within twenty (20)

days of the date of this order, an amended complaint to add the additional claim of retaliation. the allegations of the amended complaint shall be consistent with the court's ruling on the motion to dismiss and reconsider.

SO ORDERED.

Dated at Hartford, Connecticut, this 2nd day of October, 1990.

Peter C. Dorsey
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. H-89-328 (PCD)

RICHARD LINDQUIST :

-vs- :

IRVING GOLDSCHNEIDER, et al. :

RULING ON MOTION FOR SUMMARY JUDGEMENT

Plaintiff claims that defendants Irving Goldschneider and James Mulvihill, in their official and individual capacities, interfered with and deprived him of his first amendment rights. Defendants have moved to dismiss or, in the alternative, for summary judgement. As the motion to dismiss was addressed in substantial part in the ruling dated March 30, 1990, the present motion will be treated as one for summary judgement.

Background

Plaintiff, an associate professor of pathology at University of Connecticut's School of Medicine ("UCONN") alleges that defendants Goldschneider, chairman of plaintiff's pathology department, and Mulvihill, UConn's Vice President and Provost of Health Affairs, interfered with the exercise of his first amendment right to academic freedom by directing him not to teach and acquaint students with areas of scientific controversy, by threatening him with financial punishment should he not comport

his behavior to their demands, by denying him a merit increase and by retaliating against his exercise of free speech by refusing to approve his application for an American Cancer Society ("ACS") Grant.

Defendants contend that plaintiff was never required to alter his teaching methods, but rather was denied a merit increase on the basis of poor teaching evaluations. Defendants further respond that the denial of his application for an ACS grant was founded on his refusal to comply with institutional filing requirements in protest of the University's policies regarding the collection and distribution of funds.

Analysis

The doctrine of academic freedom, grounded in the First and Fourteenth Amendments, has undergone an evolution since the late 1950's, in which the Supreme Court found, in Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957), that the state may not abridge the University's essen-

tial right "[t]o determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study," to the recent Dube v. State Univ. of New York, 900 F.2d 587 (2d Cir. 1990), cert. denied, 111 S. Ct. 2814 (-1991), in which the court of appeals upheld a professor's right to espouse controversial views on the grounds that "-[t]he First Amendment tolerates neither laws nor other means of coercion, persuasion or intimida-

tion 'that casts a pall of orthodoxy over the free exchange of ideas in the classroom.'" Dube, 900 F.2d at 589, quoting Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967). There is a potential tension between the freedom of individual

professors within an academic institution and the right of the institution to make choices that affect academic life. See, e.g.,

Pierowski v. Illinois Community College Dist., 759 F.2d 625 (7th Cir. 1985), cert. denied, 474 U.S. 1007 (1985) ([Academic freedom] is used to denote both the freedom of the academy to pursue its ends without interference from the government . . . and the freedom of the individual teacher (or in some versions -- indeed in most cases -- the student) to pursue his ends without interference from the academy . . .); Levin v. Harleston, 770 F. Supp. 895, 912 (S.D.N.Y. 1991) ("[P]rotection of [the principle of academic freedom] is not just for the faculty, but also for the students, as it is a fundamental precondition for an exciting,

challenging and open intellectual atmosphere.").

Plaintiff contends that both defendant Goldschneider's denial of a merit increase in the Spring of 1984 as well as his refusal to sign plaintiff's grant application stemmed directly from his distaste for plaintiff's controversial views as ex-pounded in the classroom. Plaintiff further alleges that he was told by defendant to alter his teaching style and that, despite his accommodation to defendant's request, he was not compensated

for the lost increment of pay. Defendant notes that plaintiff - - teaching an identical curriculum -- received a merit increase for the previous year, but in 1984 defendant not only observed plain-

tiff's classroom behavior with some consternation but, in 1984, plaintiff received negative student evaluations. Plaintiff fails to substantiate his conclusory allegations that the reason for actions taken against him were linked to the content of his intellectual views.1/ He asserts that Goldschneider had given him no indication in prior years that either the substance or methods of his teaching were problematic, but that "the real reason for Defendant's conduct, as admitted by Defendant Goldschneider in his own deposition . . . was that some negative student evaluations came to the attention of Defendant Mulvihill."2/

1/ Indeed, plaintiff does not even substantiate his claim that the views he introduced into the classroom were, in fact, con-

troversial, and fails to address defendant's assertion that plaintiff's "so-called 'controversial ideas,' save one, were covered in either suggested or required texts for pathobiology from 1985 to the present." Defendants Motion for Summary Judgement at 15.

2/ Plaintiff's oblique and conclusory references to defendant Mulvihill's "long-standing history of insinuating himself into the academic process" is equally unavailing. Plaintiff fails to demonstrate adequately how defendant Mulvihill actually contributed to or acted to infringe plaintiff's constitutional rights. Without further documentation or support for plaintiff contention that Mulvihill was a pivotal or important party in Goldschneider's actions, this court is unable to find that, to any significant extent, defendant Mulvihill was involved in the events which gave rise to this action.

Plaintiff's Memorandum of Law in Opposition to Motion to Dismiss at 8. Plaintiff's claims that he was told to change the actual content of his teaching and that he was denied a salary increase on the basis of his views rather than as a consequence of an increased number of

negative evaluations by students do not support a reasonable inference that his academic freedom was abridged. See Hetrick v. Martin, 480 F.2d 705 (6th Cir.), cert. denied, 414 U.S. 1075 (1973). Plaintiff has offered no evidence to rebut defendants' contention that the denial of a merit increase was motivated by negative student evaluations, particularly in view of Goldschneider's willingness to award plaintiff a merit increase in prior and subsequent years. It would be inappropriate to interfere with the right of an academic institution to make decisions regarding merit increases on the basis of a professor's teaching performance, a judgement much better left to the university's established processes. See Lovelace v. Southern Massachusetts Univ., 793 F.2d 419 (1st Cir. 1986); Clark v. Whit-

ing, 607 F.2d 634, 640 (4th Cir. 1979(("[C]ourts may not engage in 'second-guessing' the University authorities in connection with faculty promotions.").

Plaintiff's claim that defendant refused to sign his ACS grant application in retaliation for his outspoken views is both contradictory and conclusory. It is unclear whether plaintiff is alleging that the refusal related to plaintiff's allegedly

controversial teaching or to his objection to university policy regarding grant application. To the extent that plaintiff intends the former interpretation, he has failed to adduce evidence sufficient for a reasonable jury to infer that his first amendment rights were abridged. With respect to the latter possibility,

plaintiff claims, on the one hand, that he deliberately did not request 15% reimbursement of his salary (a process referred to by all parties as "SSOG") in protest of university policy regarding the disbursement of grant money (Lindquist Affidavit ¶ 25), while on the other hand he avers that the university had no established policy on this matter, thereby precluding the notion that defendant declined to sign and process the application because plaintiff was not complying with university policy. Plaintiff's Opposition to Motion for Summary Judgement at 14. Plaintiff does not proffer any substantive reason that would permit a reasonable inference that university policy was irrational or discriminatory, and has failed to demonstrate in what way his protest of university policy rises to the

level of protected speech. While fully entitled to protest the university's methods of distributing grant awards, plaintiff cannot take shelter in the first amendment after clearly violating established procedures that plaintiff already knows will result in the denial of the requested grant. See Givhan v. Western Line Consolidated School Dist., 439 U.S. 410 (1979).

Therefore, because there are no material facts in dispute and defendants are entitled to judgement as a matter of law, defendants' motion for summary judgement is granted.

Conclusion

For the foregoing reasons, defendants' motion for summary judgement is

granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 30th day of January, 1992.

Peter C. Dorsey
United States District Judge

CONSTITUTIONAL PROVISIONS

Constitution of the United States of America, Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States of America, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

THIRD AMENDED COMPLAINT, EXCERPTS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD R. LINDQUIST,
Plaintiff, Civ. No. H89-326-PCD

v. November 2, 1990

IRVING GOLDSCHNEIDER, ET AL.,
Defendants

THIRD AMENDED COMPLAINT

18. As a consequence and result of Plaintiff's public criticism of and opposition to Defendant Goldschneider's and the University's policy regarding the collection and distribution of state SSOG funds, Defendant Goldschneider has refused, and continued to refuse, to approve Plaintiff's research proposal to the American Cancer Society.

GOLDSCHNEIDER AFFIDAVIT, EXCERPTS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EDWARD F. LINDQUIST CIV NO. H-89-326-PCD
Plaintiff

IRVING GOLDSCHNEIDER,ET AL.
Defendants

AFFIDAVIT OF
IRVING GOLDSCHNEIDER,M.D.

STATE OF CONNECTICUT)
) ss Farmington July 23, 1991
COUNTY OF HARTFORD)

47. A longstanding school of medicine policy requires that, as a general rule, faculty requesting extramural grant support must request at least 15% SSOG reimbursement.

50. Based on those discussions, I could not approve Dr. Lindquist's application (meaning the American Cancer Society research proposal) in which he requested only 10% SSOG. However. I advised Dr. Lindquist what changers needed to be made to bring the application within School of Medicine policies.

52. Dr. Lindquist never offered any legitimate explanation as to why he should be permitted to request less than the standard minimum SSOG of 15%.

53. Rather he (meaning Lindquist) was quite clear that the purpose of requesting less than 15% was his form of personal protest against the school's SSOG policy.

57 To date, Dr. Lindquist has neither modified the grant application nor offered any reason (other than personal protest) why he should be able to request less than 15% SSOG. He did however submit five (5) additional extramural grant applications in 1987, including two (2) to the American Cancer Society, which **complied with institutional guidelines on SSOG and which were approved by me.**

_____

Irving Goldschneider, M.D.

Subscribed and sworn to before me as true and correct to the best of the affiant's knowledge, information, and belief this 23rd of July, 1991

_____

William N. Kleinman
Commissioner of the Superior Court

LINDQUIST AFFIDAVIT, EXCERPTS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD R. LINDQUIST CIV NO. H-89-326-PCD
Plaintiff

IRVING GOLDSCHNEIDER,ET AL.
Defendants,

AFFIDAVIT OF RICHARD R. LINDQUIST

STATE OF CONNECTICUT}
} ss Farmington
COUNTY OF HARTFORD }

25. ....I indicated in my application that I intended to devote 10% of my time to the work on this (meaning the American Cancer Society Grant at issue). Accordingly, I also requested from the American Cancer Society reimbursement for faculty salary support in the amount of 10% of my salary. These funds are commonly known as SSOG. I did not request more money from the granting agency as SSOG because of my longstanding opposition to the SSOG policy utilized by the University of Connecticut Health Center and School of Medicine, especially since I intended to devote no more than 10% of my time and effort to the grant.....

26. ....,Dr. Goldschneider refused to sign my ACS grant application. Thereafter, he informed me that he would not sign the application until such time as I agreed to increase my SSOG request from 10% to

15%. Dr. Goldschneider indicated that the University of Connecticut School of Medicine policy required all grant applications contain a minimum SSOG request of %15; Dr. Goldschneider further informed me that he considered my request for 10% merely to be a continuation of my protest of the University's SSOG policy.

_____

Richard R. Lindquist
Subscribed and sworn to before
me this 11th day of September, 1991
of July, 1991

_____

Commissioner of the Superior Court

DEPOSITION OF EUGENE SIGMAN, EXCERPTS
(Emphasis not in original transcript)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD R. LINDQUIST CIVIL ACTION
NO. H-89-326
(PCD)
v. AUGUST 7, 1991
IRVING GOLDSCHNEIDER,ET AL.

DEPOSITION OF EUGENE SIGMAN, M.D.

@228, Deposition of Eugene Signan:
08 Q OK. And then I asked you, "And within that

07 written policy is there a statement that faculty are

08 expected to request from granting agencies that at least 15

09 percent of their salaries be funded as part of the grant

10 award," and then you said, I believe, yes. Right?
11 A Right.

12 Q Now, where in the policy is that statement?

13 A It is not in the policy statement.

@229, Deposition of Eugene Signan:
02 Q So the policy wasn't a re-

quirement; it was merely

03 a suggestion, the written policy?

04 A It was a suggestion.

@213, Deposition of Eugene Sigman:
14 A Three, there is a small grant -- and I really

15 can't tell you right now what is a small grant, 10 percent

16 or 12 percent -- where we don't ask for any SSOG at all.

@268, Deposition of Eugene Sigman:
06 Q Now, if a faculty member intends to devote, say,

07 10 percent of his time and effort to the grant, it is my

08 understanding that the internal policy of the university

09 nevertheless asks that faculty member to put down a request

10 for no less than 15-percent SSOG; is that right?

11 A Wrong.

12 Q Why is that wrong?

13 A We can't ask for more than the amount they are

14 going to be asking for as a T and E.

15 Q Now, are there any internal guidelines which

16 require the faculty member to put down a minimum 15-percent

17 T and E on the grant?

18 A Minimum of T and E, no.

19 Q Now, with respect to the grant application that

20 was submitted by Dr. Lindquist in 1987 that's the subject of

21 this litigation do you recall what percentage T and E he put

22 down on his grant?

23 A No.

24 Q If he had put down less than 15-percent T and E on

25 his grant could he have asked for a minimum 15-percent SSOG?

0269

01 MR. KLEINMAN: Objec-tion to the form of the

02 question.

03 A Let me get this thing straight. The grant

04 application says a time and effort of 10 percent?

05 BY MR. MIRMAN:

06 Q Yes. Let's assume that for the sake of argument.

07 A And the faculty member asks for more than the time

08 he is putting in?

09 Q No. Could he ask for more?

10 A He could probably ask for more, but he would get

11 turned down.

12 Q So as I understand your testimony then the policy

13 regarding the asking for SSOG of a minimum of 15 percent

14 applies only under those circumstances where a faculty

15 member identifies on his grant application that he intends

16 to spend at least 15 percent of his time devoted to the

17 grant?

18 A If I get your question correctly they cannot

19 exceed the T and E, the asking for the salary offset.

20 Q We have spent a considerable amount of time now

[illegible] about the minimum SSOG requirement, you and I; is

22 that a fair statement?

23 A Yes, I would say more than enough, yes.

24 Q And you testified that it was the policy of the [redacted]

25 medical school to require faculty members to put down a

0270

01 minimum 15-percent SSOG on their grants except in a few

02 specifically enumerated instances; is that right?

03 A Assuming that the 15 percent is at least

04 equivalent and probably less than the T and E.

05 Q So the 15-percent-SSOG requirement applies only in

06 those circumstances where the faculty member puts down

07 15-percent T and E or more?

A Yes.

@206, Deposition of Eugene Sigman:
A I am not sure if that's the SSOG or the time and effort you are referring to.

Q What's the difference?

A The time and effort is the amount of time that the faculty member is presenting to the granting agency that he or she will spend in conducting the research. The SSOG hopefully will be about the same, but they can't always be the same because of competitiveness and other issues. It may be slightly less, or it could be the same.

@267, Deposition of Eugene Sigman:
Q OK. Now, a grant application asks a faculty member to identify what percentage of his time he intends to devote to the grant; is that correct?

A Time and effort.

Q Right. Well, that's the so-called time and effort

24 portion?

25 A T and E.

@268, Deposition of Eugene Sigman:
01 Q And then independent from that there is an

02 internal policy of the medical school, as I understand your

03 testimony, that requires the faculty member to ask for a

04 percentage of salary for SSOG; is that right?

05 A Yes.
@268, Deposition of Eugene Sigman:
15 Q Now, are there any internal guidelines which

16 require the faculty member to put down a minimum 15-percent

17 T and E on the grant?

18 A Minimum of T and E, no.

DEPOSITION OF J. E. MULVIHILL, EXCERPTS
(Emphasis not in original transcript)

0001

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION
No. H-89-326 (PCD)

RICHARD LINDQUIST :

vs. :

IRVING GOLDSCHNEIDER, ET AL. :

AUGUST 13, 1991

DEPOSITION OF
JAMES E. MULVIHILL, D.M.D.

@027, Deposition of James E. Mulvihill:
A I don't know if there are written School of Medicine policies.
Q Regarding grant applications?
A Regarding grant applications.

@110, Deposition of James E. Mulvihill:
Q And to your knowledge was there ever any minimum required requirement for faculty to put in for SSOG funding on their grant applications?
A If there is a minimum num-

ber for the school I
don't know what it is, nor have I ever sought to tell anyone
what it should be or to have a policy adopted by the
institution as to what it should be.

Weiss, Deposition of Carla E. Malvinill:

Q Are you familiar with the concept of SSOG?
A Yes.
Q What is it?
A It relates to salary support on grants that deans
administer and that encourages investigators putting in
research grants to put in a component of their time and
effort on the grant, the salary scale.

AGREEMENT WITH U.S. NOT TO BILL MORE SSOG THAN ACTUAL TIME

THE UNIVERSITY OF CONNECTICUT
HEALTH CENTER

September 22, 1978

Mr. Steven C. Bernard
Deputy Director
Division of Contracts and Grants
National Institute of Health
Building 31, Room 1803
Bethesda, Maryland 20014

Dear Mr. Bernard:

Thank you for your hospitality of July 19, 1978 and please accept my personal apologies for this tardy response to your letter and our meeting.

As we explained in your office, all salary support for tenured faculty at the University of Connecticut Health Center is from State appropriated funds in accordance with University policy. As with many educational institutions, the University of Connecticut Health Center is facing increasingly difficult funding problems and is therefore attempting to identify and utilize all available sources of support in order to protect the quality of all programs.

In order to maintain and improve our academic programs, we must realize all available "soft" or non-state sources of revenue. The requirement that all grant applications must request salary support

(up to 25% depending on effort) for principal investigator and other faculty is a manifestation of our need to develop all funding sources.

In summary, all applications for grant support must follow policies of the granting agency including any provisions for faculty support. These applications are subject to review by the Department Head, Dean of the School, and the Assistant Vice President for Finance and Administration. All amounts requested, up to but not exceeding 25% of the principal investigator's salary, must be supported by an effort commitment equal to or exceeding the percentage requested and must be demonstrated each month by submission on proper effort reports. No faculty member will receive a salary adjustment as a result of this procedure.

These funds will be used to support the educational programs of the University consistent with the intent of the State Legislature and State administration by releasing appropriated salary support for faculty members involved in research activities.

Detailed procedures have been written by my staff which will aid in effective administration of this procedure. This matter has been discussed in detail with the local Department of Health, Education and Welfare auditors and they indicate to us that they see no audit difficulty with either the concept or the procedure.

Excuse me again for this very tardy re-

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sponse to our meeting of July 19, 1976 and if you have any questions please call me at (203) 674-2131 or Mr. Jerome Kiel at (203) 2518.

Sincerely,

James C. Leming
Assistant Vice President for
Finance and Administration

JCL/bh
cc: Dr. DiBiaggio, Dr. Loe, Dr. Massey
Mr. Stuart Wilson, Mr. Jerome Kiel

FREEDOM OF INFORMATION ORDER

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Richard P. Lindquist
Complainant

against Docket #FIC 86-46

Assistant Dean of Finance
UCONN Medical School of the
State of Connecticut.
Respondent March 11, 1986

The following order by the commission is hereby recommended on the **basis of the** record concerning the above captioned complaint

1. The respondent shall forthwith provide the complainant with access to inspect the records of all departments with SSOG income showing all income and all itemized disbursements for each income source for the 3 years prior to the complainant's request.

Commissioner Deane Avery

DEPOSITION OF I GOLDSCHNEIDER, EXCERPTS
(Emphasis not in original transcript)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
- - - - - - - - - - - - - - - - - - x
RICHARD R. LINDQUIST,
Plaintiff,
vs.
Case Number
IRVING GOLDSCHNEIDER, ET AL,
CV-H-89-328
Defendants.
(PCD)
- - - - - - - - - - - - - - - - - - x

DEPOSITION OF IRVING GOLD-SCHNEIDER
February 23, 1990

Q. The three graduate students that you named (that were supported by SSOG funds) all work in your laboratory?
A. That's correct, the three other graduate students, yes.

Q. What was my question?

Wasn't my
question whether those three worked in your
laboratory? Did you answer that?
A. I did answer that, yes.
Q. The answer is yes?
A. I said they did, yes.
Q. Thank you.

Q. Do you recall now, where you didn't
before, whether SSOG funds were used for
travel?
A. For whose travel?
Q. Anyone's travel.
A. Yes. I believe so.
Q. Were they used for your travel?
A. To the extent -- I believe, and
again, I would have to check the record, but
I believe that they were used in situations

in which I was representing the department,
that is, I was traveling as department
chairman, not in the capacity of my own
personal research program.
Q. Who accompanied you during those
trips?
A. I don't know of anyone accompanying

me during those trips. I don't know how many trips there were.

Q. During any of those trips, did anyone accompany you, besides yourself?

A. It's possible during the -- I have to make a lot of assumptions here. If SSOG funds were used, wholly or in part, to sponsor my trip to the Association of Pathology Chairmen meetings last fall, that my wife may have accompanied me to that meeting.

Q. Where was that meeting held?

A. That meeting was held in Bermuda.

Q. Did you go swimming during that time?

MR. KLEINMAN: Objection. I'm going to direct you not to answer that question.

BY MR. LINDQUIST:

Q. Did you go swimming during the meeting in Bermuda?

A. I'm not going to answer

that question.

MR. KLEINMAN: That's an abusive, harassing question. It has nothing to do with this lawsuit.

BY MR. LINDQUIST:

Q. Do you refuse to answer that question?

MR. KLEINMAN: You can answer that question.

A. I do, for the reasons given.

BY MR. LINDQUIST:

Q. You do refuse?

A. For the reasons given.

MULVIHILL'S ADMISSIONS, EXCERPTS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD R. LINDQUIST CIV NO. H-89-326-PCD
Plaintiff
v. March 14, 1990
IRVING GOLDSCHNEIDER,ET AL.
Defendants

DEFENDANT MULVIHILL'S ANSWERS TO PLAINTIFF'S REQUEST FOR ADMISSIONS

168. Defendant Mulvihill has no written policy, rules or regulations indicating that minimum amount of time must be devoted to an individual research project.
Answer: Admitted.

167. The University of Connecticut has no written policy, rules or regulations indicating that minimum amount of time must be devoted to an individual research project.
Answer: Admitted.

James E. Mulvihill

GOLDSCHNEIDER ADMISSIONS, EXCERPTS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD A. LINDQUIST CIV NO. H-89-[illegible]
PCD
Plaintiff
v. March 9, 1990
IRVING GOLDSCHNEIDER,ET AL.
Defendants

DEFENDANT GOLDSCHNEIDER'S ANSWERS TO PLAINTIFF'S REQUEST FOR ADMISSIONS

165. **Defendant Goldschneider** has no written policy, rules or regulations indicating that minimum amount of time must be devoted to an individual research project.
Answer: Admitted....

166. Defendant Mulvihill has no written policy, rules or regulations indicating that minimum amount of time must be devoted to an individual research project.
Answer: See answer to 165.

167. The University of Connecticut has no written policy, rules or regulations indicating that minimum amount of time must be devoted to an individual research project.
Answer: Admitted....

Irving Goldschneider, M.D.

EXCERPTS FROM BRIEF SUPPORTING MOTION TO RECONSIDER ORDER OF SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
FOR CONNECTICUT

RICHARD R. LINDQUIST, Civ. No. H89-326PCD
Plaintiff,

v. FEBRUARY 23, 1992

IRVING GOLDSCHNEIDER, ET AL.,
Defendants

MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER ORDER OF SUMMARY JUDGMENT

-10-

Had Lindquist put down 15% SSOG on his ACS grant with 10% T&E, the Court could rightfully grant summary judgment because this would have violated university policy, and, if it involved a U.S. governmental granting agency, it would have been fraudulent. Hence, summary judgment must not be granted on the basis that Lindquist clearly violated established university SSOG policy.

EXCERPTS FROM BRIEF SUPPORTING APPEAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket no.: 92-7753

RICHARD R. LINDQUIST.

Plaintiff-Appellant,

v

IRVING GOLDSCHNEIDER, Official in his individual capacity as Head Dept. of Pathology, University of CT school of Medicine,; JAMES E. MULVIHILL, in his official capacity as Vice President and provost for Health Affairs, University of Connecticut,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT
OF CONNECTICUT

-33-

The aspect of the SSOG policy Lindquist questioned, in the ACS grant at issue in the instant case, was that he was required to overstate the percent of his salary (SSOG) to the American Cancer Society so that they would have to pay more, than the actual amount of time he actually intended to spend on the research, into a "discretionary" fund held by School administrators independently of

the state budgeting process. Specifically, Lindquist was being forced to ask the American Cancer Society for 15% of his annual salary when in fact he was only going to devote 10% of his annual time to the research. Thus, the American Cancer Society, and the millions of contributors to the American Cancer Society, was to be overcharged by 5% of Lindquist's

-34-

annual salary for work not actually performed. See Ruling on Motion for Summary Judgment, at 1-2, Appellant Appendix at 23-24, (confirming that this claim was before the court on the summary judgment motion).

-36-

The form the protest took was to attempt to expose the duplicity involved in the School's insistence that it charge the American Cancer Society for 5% of Lindquist's salary that was not going to be devoted to the ACS research proposal.

EXCERPTS FROM BRIEF SUPPORTING MOTION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket no.: 92-7753

RICHARD R. LINDQUIST,
Plaintiff-Appellant,

- v. -

IRVING GOLDSCHNEIDER, Official in his individual capacity as Head Dept. of Pathology, University of CT school of Medicine,; JAMES E. MULVIHILL, in his official capacity as Vice President and provost for Health Affairs, University of Connecticut,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF CONNECTICUT

PETITION FOR REHEARING

-10-

Even assuming arguendo there was only one policy requiring 15% of my salary to be reimbursed from the granting agency, which was applicable to research proposals to grants when only 10% of my actual

time and effort was devoted to the grant; I would have presumed that Judge Dorsey would have considered this was a "substantive reason that would permit a reasonable inference that university policy was irrational". Or is obtaining money from American Cancer Society for work not performed only fraudulent and not "irrational"?

CONNECTICUT GENERAL STATUES, EXCERPTS

Sec. 10a-102. Object of the University.

.... Said university is authorized to confer the academic and professional degrees appropriate to the course proscribed by its board of trustees. The board shall establish policies which protect academic freedom and the content of course and degree programs, provided such policies shall be consistent with state-wide policy and guidelines established by the board of governors of higher education.

History: P.A. 82-218 reorganized higher education system, amending section to require board of trustees to establish policies to protect academic freedom and content of course and degree programs.

THE UNIVERSITY OF CONNECTICUT LAWS AND BY-LAWS, EXCERPTS

Article XV

B. The policies and practices in this section and the following sections concerning academic freedom and tenure of professional members of the staff apply to all members of the professional staff of the University, with the exception that, concerning tenure, the president after consultation with the University Senate, shall recommend to the Board of Trustees the categories of the professional staff to which academic tenure apply.

1 All members of the faculty, whether tenured or not, are entitled to academic freedom set forth in the 1940 Statement of Principles on Academic Freedom and Tenure formulated by the Association of American Colleges and the American Association of University Professors. The faculty member is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his or her other academic duties, but research for pecuniary return should be based upon an understanding with the authorities of the University.

"MINIMUM LEVEL OF EFFORT" STANDARDS URGED FOR PI'S

"Establishing a minimum level of effort" for a federally funded research project's principal investigator (PI) was recommended by the Office of Inspector General of HHS in a report to Congress on the cost of research at universities and the utilization of research manpower. Inspector General Richard Kusserow said the results of a survey by his office found that, "A significant percentage of PI's reported little or no effort on Federal projects and no evidence was available to indicate otherwise. Our analysis showed that 92 PI's (33 percent) charged no effort to their projects." The report said, "PI's were involved in other projects, ranging from a low of one other project to a high of 14. Graduate assistants under the leadership and direction of skilled PI's appeared to be performing most of the technical research work."



Richard P. Kusserow, HHS Inspector General

The report was prepared at the request of the House Labor-HHS-Education Appropriations Subcommittee to determine whether extramural research costs are being well-managed. The IG said that his survey identified "possible opportunities for improving the NIH grant process."

With respect to research costs, the OIG found that,"Salaries and wages represent about 60 percent of the total direct cost for federally sponsored research." The OIG's survey "suggests that competition among research institutions and between private firms for proven scientists is the primary reason for driving salaries and related benefits upward."

The IG urged that the award application and review process be streamlined, that formal applications for noncompeting grants be eliminated, and that the project award be extended to a 5- to 7-year period. The IG also said, "A process to screen abbreviated proposals for new projects and request detailed applications only for those likely to be funded would increase efficiency."

The IG also urged Congress to review standards of conduct rules applicable to universities and "the potential for unfair personal financial gain from federally sponsored research efforts" especially regarding copyrights and patents.